Committee on Resources
Subcommittee on Energy & Mineral Resources

Witness Statement

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Written Testimony

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I am testifying today on behalf of the Independent Miners, the entrepreneurs of the mining industries. Like most small businessmen in the United States, they are the ones with tenacity. After all, it was the small businessman who had the heart, soul, and the intestinal fortitude to settle this great land and instill the values that became the backbone of this Nation. Mining provided a challenge for this hardy lot, and the same quality is found in Independent Miners today.

I am proud to say that I myself am a fifth generation Idaho miner. Still today, with all of the modern technology, an Independent Miner locates 99% of all mines.

Mining has been afforded a special place in our laws relating to public lands. The basic Mining Law of May 10, 1872, Stat. 92, 30 USC 21-54 encourages the prospecting, exploring, and developing of mineral resources on public lands. "The system envisaged by the mining laws was that the prospector could go out into the public domain, search for minerals and upon discovery establish a claim to the land upon which discovery was made." United States v. Curtis/Nevada Mines, Inc., 61 F2d 1277,1281 (9th Circuit 1980). So long as they have complied with the laws of the United States and applicable State and local laws, locators of mining locations were given "exclusive right of possession and enjoyment of all surface included within the lines of their location", along with subsurface rights.

The Mining Law of 1872 provides for the location of mining claims upon public domain not otherwise withdrawn from mineral entry. The law grants to the locator of a valid claim the right to conduct prospecting, mining, or processing operations or uses reasonably incidental to such activities on the claim. Section 22 of Title 30, USC provides:

All valuable mineral deposits in the lands belonging to the United States, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and purchase and the land in which they are found to occupation and purchase by citizens of the United States….

The Surface Resource Act of 1955 provides that the locator's use of the surface of his claim, prior to the issuance of patent, would be:

> ….subject to the rights of the United States to manage and dispose of the vegetative resources thereof and to manage and other surface resources thereof.
>
> .... any use of the surface of such claim by the United States ... shall be such as not to endanger or materially interfere with prospecting, mining, or processing operations or uses reasonably incidental thereto. 30 USC 612

The power of the Forest Service to promulgate regulations governing activities derives from the Organic Act, which created the National Forest System, 16 USC 551. The specific authority to manage surface resources on mining claims, however, is granted by the Surface Resource Act of 1955, 30 USC 612. This authority was promulgated in the 36 CFR 228 Regulations.

The Bureau of Land Management (BLM) received its authority through the Federal Land Policy and Management Act of October 21, 1976 (FLPMA). The purpose of Sections 302, 303, 601 and 603 of FLPMA was to prevent unnecessary or undo degradation of the land. These regulations are the 43 CFR 3809's. FLPMA, in Section 314, also authorized the BLM the following:

> The owner of an unpatented lode or placer claim located prior to the date of this Act shall, within the three-year period following the date of the approval of this Act and prior to December 31 of each year thereafter, file the instruments required by paragraphs (1) and (2) of this subsection. The owner of an unpatented lode or placer claim located after the date of the Act shall, prior to December 31 of each year following the calendar year in which the said claim was located, file the instruments required by paragraphs (1) and (2) of this subsection.

The purpose of Section 314 of FLPMA was to furnish BLM with information on the location and number of unpatented mining claims, mill sites and tunnel sites. Other objectives were to determine the name and address of the current owners of record, and to require the filing of an affidavit of assessment work or a notice of intention to hold the claim, thus providing only a library of information. Most importantly, nothing in FLPMA amended the General Mining Law of the United States. FLPMA only effected minerals by changing the withdrawal procedures, recordation of mining claims with the BLM and authorizing the regulations for surface protection of public lands.

A valid mining claim is an intermix of State and Federal law. While the statutory provisions permit states to set requirements for locating mining claims on federal lands, they do not distinguish between matters governed by Federal law and matters governed by state law. Rather the Federal statutes establish basic requirements governing the location of mining claims and permits them to be supplemented by local laws which are not inconsistent with Federal law. The difference is important. It means that a valid mining claim is not the result of complying with either federal or state law, but complying with an intermix of state and federal law. (Scott Burnham, 100 IBLA 94, 127 (1987)).

As an example, only the Secretary of Interior can issue patent, but the chain of title and the determination of the private property right on an unpatented mining claim lies with the county recorders office.

The basic mining laws, and the rights granted thereunder, have remained essentially unchanged. Quite frankly, the General Mining Law was the first "EQUAL OPPORTUNITY EMPLOYMENT ACT" in this

Nation. It was the first law that treated everyone equally, without prejudice regardless of race, color, gender, creed or financial standing. It was one of the first legislative actions that allowed women to own real estate in this country. The General Mining Law is one of the prime reasons that the Women's Right-to-Vote Movement came from the West Coast to the East Coast, with the first state granting the privilege being Wyoming.

The importance of mining was once again mandated with the passage of the National Mineral Policy Act of 1969. Mr. John Wold worked diligently to reaffirm that it be the policy to for the Federal Government to "foster and encourage mining".

I do not deny that mining invariably has impacts on surface resources in greater or lesser degrees. Similarly, absolute preservation of all surface resource is inimical to mining. The application of Statutes and Regulation attempt to strike a balance; however, the manner in which these regulations and policies are being applied has created a gross imbalance. Miners' Statutory rights to hold mining claims, conduct operations, and obtain patent are unreasonably circumscribed by these practices. The economic impact to state and local government does not go without mention.

What does mining mean to Idaho's economy?

According to the Idaho Council on Industry and the Environment (ICIE), in 1995 Idaho mines yielded 300,000 ounces of gold with a value of $119 million. The mining industry had $132 million in capitol investments in 1995. The dollar value of Idaho's Mineral production was $1.4 billion in 1996.

Over the five-year period between 1991 and 1995, the mining industry paid $833 million to 4,714 workers in Idaho. In 1995, the industry paid $190 million in wages to 5,061 Idaho workers. The average miner earned $37,500.00 in 1995, which is 60% greater than the salary of the average Idaho worker.

These benefits have an impact on the entire state.

The production and processing of metals and minerals in Idaho generated $61million in local, state and federal taxes and fees. $26 million of this amount went towards property taxes. The assessed value of the Idaho mining industry was $446 million.

According to the Idaho Mining Association, the average miner's annual salary of $37,500 produced $215,500 of metal or mineral value. The industry paid $12,000 in taxes and fees per worker (not including federal or state income taxes, or social security taxes). For each worker, the industry bought $45,500 in goods and services, and invested $17,800 in capitol assets.

A single miner earning an average of $37,500 (1995), using the EZ tax form would pay $2,283.00 in state income taxes. Sixty-nine percent of that goes to education, but 49% of the state budget goes to public schools. The average miner pays 49% of his state taxes towards education, or $1,118.67.

As you can see, the self-initiation provisions of the General Mining Law are right in step with the times. As we strive to curtail people from the public dole, the law allows anyone to better him or herself with hard work.

Valley County, Idaho is the home of Stibnite Mines. 60% of the tungsten and antimony used and stockpiled for the World War II effort came from Stibnite. We mined the ore, produced the armament, and the Allied

Forces defeated the Nazis in just 4 ½ years. Yet modern day mining was forced to wait 3 ½ years to get a road use permit on a road that is used every day, freely, by the general public.

This delay was due to the fact that the United States Forest Service and National Marine Fisheries Service would not act in a timely manner. I certainly hope we do not go to war!!!

In 1993, Valley County, Idaho received in excess of $700,000 in taxes generated from modern-day mining, yet while the mine waited for the road use permit, taxes were reduced to less than $5000. This reduction is substantial to a county that is only 5 ½ percent privately owned. We must have reasonable use of the Federally Administered lands in Valley County, to ensure that local government can support its infrastructure.

Overall, tax revenue from mining in Idaho has been dramatically reduced since 1995, due to creative interpretation of regulation, policy, and unreasonable delay.

PATENTS

Patent has always been an interesting part of the mining law. Yet, Mr. Babbitt, as Secretary of the Interior, has refused to sign patents. When Mr. Babbitt took his Oath of Office, he swore to uphold the United States Constitution, and the laws of this country. In whereas the final signature on a patent is a non-discretionary action, pursuant to the General Mining Law, he must sign the patent.

What Mr. Babbitt has done is tantamount of malfeasance of office.

The Jeppesen case

The BLM has refused to process patents. The Courts have refused a writ of mandamus, requiring that the BLM issue the First Half-Final Certificate (FHFC). However, the Court did issue a writ of mandamus compelling the government to proceed with the processing of Jeppesen's patent application. The government was required to proceed with the process - including publication of the Notice of Applications in a timely manner as required by regulation and unencumbered by the Congressional Moratorium against incurring expense in the adjudication of patent applications that have not received their FHFC. (C.P. Jeppesen, Jr. v. Bruce Babbitt, Department of Interior, Idaho State Office, Department of Interior (BLM).)

Even with all of the metals and minerals that are used in the daily lives of all Americans, only 3.5 million acres of Federally Administered land has been transferred to private ownership since 1872. This acreage equals one-half of one-percent of the 664 million acres of Federally Administered land. Those 3.5 million acres are about two-thirds of the size of Owyhee County, Idaho.

Think about it, 3.5 million acres have been patented under the General Mining Law. 288 million acres were converted to private hands through Agricultural Homestead; 94 million acres of public lands were given in land grants to the railroads; over 100 million acres of public lands have been declared as Federal Wilderness. In fact, fewer acres have been patented since 1872 in the entire country, than have been declared Wilderness in just one state - Idaho.

SPECIAL DESIGNATIONS OF PUBLIC LANDS

Of the 664 million acres of Federally Administered public lands in the United States, 70% of this is off-

limits to mining because of special designations. After the deduction of the acreage required for actual administrative purposes, our country is left with only 28% of the public lands being open for mining purposes. Only 19 of our 50 states have any of these public lands that are available for exploration and mineral development.

A special designation, such as Federal Wilderness, Wild and Scenic River Corridor, or National Recreation Area, is subject to valid, existing mineral rights in most cases. **However, no one is ever really allowed to mine their valid, existing mineral claims.**

SAWTOOTH NATIONAL RECREATION AREA

I personally turned in a Plan of Operations in 1993 for mining my claims, which are located in the Sawtooth National Recreational Area. The U.S. Forest Service, without benefit of an Environmental Assessment (EA) - as required by the National Environmental Policy Act (NEPA) - determined that an Environmental Impact Statement (EIS) would be needed. The Forest Service notified me that they would need to budget, in order to cover the costs of this EIS. They stated that they expected to have the EIS completed by 1996, or at the latest, 1997. To date, the EIS has not been addressed in ANY budget. This is surely unreasonable delay.

SALMON RIVER WILD AND SCENIC RIVER CORRIDOR

I guess I do have one question for Congress. Was it REALLY the Intent to enjoin ALL placer mining in the Salmon River Wild and Scenic River Corridor, above the high water line? **If this was the intent, then many, many innocent people have suffered irreparable harm.**

If it was the Intent of Congress to allow mining within these Special Management Areas, then PLEASE make the agencies DO THEIR JOBS! If, in fact, it was the Intent of Congress to do this, with the passage of the Central Idaho Wilderness Act of 1980, then I ask **why** there are **still** valid, existing placer mining claims being held in this Salmon River Wild and Scenic River Corridor?

THE ELAINE PLACER - THE CASE OF STANLEY MACK GROVER

A Potential Case of Governmental Abuse of Power and Ethics Violations

I personally know of one such mining claim that exists in this area. The Elaine Placer, held by Stanley Mack Grover, is in this area, as it has been since 1968 (years before the passage of the Central Idaho Wilderness Act, which designated the Salmon River as a Wild and Scenic River).

The Federal Code of Ethics, 5 CFR 2635, that all Federal employees are bound to, apparently does not concern District Ranger Rogers Thomas, of the North Fork District, Salmon-Challis National Forest. Included in a file to be presented at the Hearing (for the Committee's files), is a copy of the history of the Elaine Placer mining claim. The Grovers have had quite a struggle with the Special Designation of the area of their mining claim. They face an overzealous District Ranger with a personal vendetta. A Plan of Operations is in the processing stage, but the Grovers have had to complete appeals on every barrier that District Ranger has thrown up. Even the Forest Supervisor has agreed with the Grovers, and the District Ranger is being FORCED into processing their Plan of Operations.

As you will see when you read the file, the following interoffice memo, written by District Ranger Rogers Thomas, tells the entire story:

Mr. and Mrs. Grover are honest, hard-working, law-abiding citizens who have always believed that they could trust the word of governmental employees. The unfortunate truth, however, is that we, as the government of this Nation, sometimes employ people that are not reputable, trustworthy, or who operate on a personal agenda.

Rogers Thomas has tried for years to get rid of Mack and Flora Grover, as he has done to so many other private property owners. The Grovers are holding on, though, to their hopes and dreams of mining their claims. **In this memo (shown above), Thomas refers to the subject matter (removing the Grovers and their cabin) by saying** "…**we are going to kick another sleeping dog!"**

Just like the Grovers, we as miners are not "sleeping dogs". If it was the Intent of Congress to disallow mining in these Special Management Areas, then please, come to the table and settle these private property rights that are protected by the Fifth Amendment of the United States' Constitution. Even President Clinton recognized the private property rights vested to mining in the New World Land Deal - even though he enjoined the mining for all of the wrong reasons.

REGULATION BY POLICY

SOLICITOR'S OPINION REGARDING MILLSITES

We now have a policy, based on a Solicitor's Opinion, which says there can be only one millsite per mining claim. This is simply not true. The General Mining Law makes no limitation, nor has there been one historically. The BLM, without convention, has issued multiple mill sites to lode claims for over 40 years. In Idaho, just look to the Cyprus and Oberbillig patents to name a few.

PRESENTATION OF CHAIN OF TITLE

The BLM, through another policy decision (EMS Transmission 3/2/98, Instruction Memorandum No.98-64), is requiring miners to present a chain of title and all instruments showing transfer of interest. This is regarding the adjudication of small miners' waiver forms when all co-owners have not signed the form.

This is outside of the jurisdiction given to the BLM in FLPMA. I cannot believe that Appropriations Language would override and/or amend Statute Law. This is clear in 30 USC 28j; (a). "Nothing in Sections 28f to 28k of this title shall change or modify the requirements of Section 314(b) of FLPMA…."

In this case, the notice was sent out and the requirements instated, without sufficient time provided to advertise an absent partner out. After a backlash of complaints, an extra 30 days were given to complete the process; however, this still didn't allow enough time to advertise a co-owner out of the claim. The one thing that seemed to slip the Solicitor's mind (when he issued this policy) was that mining claims are not always transferred by Quit Claim Deed; they can also be transferred verbally.

A mining claim can be transferred by verbal conveyance accompanied by a change of possession of the property, if there is no statute providing otherwise. Doe v. Waterloo Mining Company, 70 F 455 (1895).

Now policy, based on the Solicitor's opinion, has once again set the appeals process in motion. One appellant questioned the BLM's jurisdiction to determine title, as well as the lack of a paperwork reduction number. The appeals process is ongoing, and the appellant must await the decision.

THE IMPLEMENTATION OF THE HOLDING FEE

With little regard to the 'equal opportunity provision" of the General Mining Law, the holding fee was enacted in 1993. The small miner's exemption penalized me for being married, by allowing only one member of the family to hold ten claims or less under the exemption.

One might even say this made me a chattel of my husband.

THE CASE OF LEONARD KOPCINSKI

Another Potential Case of Governmental Abuse of Power and Ethics Violations

Another instance of abuse of power and a violation of the Federal Code of Ethics can be found in the case of Mr. Leonard Kopcinski, who owns a thunderegg mine in Oregon. Mr. Kopcinski used to mine on the Ochoco National Forest. He still has valid, existing mining claims, but unfortunately, he has been enjoined from mining for two years, based on false Affidavits presented to a Federal Judge by an U.S. Forest Service employee.

James McMillin, an employee of the Forest Service, tendered an affidavit stating that Mr. Kopcinski did not have an Approved Plan of Operations. Research of the Forest Service records, however, indicated there was in fact an Approved Plan of Operations. An inter-office memo, which was also located in Mr. Kopcinski's U.S.F.S. file, proves that Mr. McMillin was well a ware of that fact when he signed the affidavit**. The Forest Service is in the process of completing an EA on an Amendment to the Approved Plan of Operations.**

Quite frankly, the Forest Service can not have it both ways. There is either an Approved Plan, or there is not. It was incumbent upon the Forest Service Officer to advise the Federal Court that an Approved Plan did exist, and to correct all incorrect statements, or he is guilty of perjury.

The truth is that 80-year-old Leonard Kopcinski has been deprived of two years of mining, because Federal employees lied under oath. Mr. Kopcinski couldn't afford legal counsel during this time frame. I believe that there should be a full investigation of this matter, including a full General Accounting Office Audit.

SUCTION DREDGING

Now I will switch back to Idaho, to the case of Suction Dredgers with valid, existing mining claims on the Nez Perce National Forest. Several of the dredgers have been in the permitting process for years, without completion. The Forest Service has once again taken the approach that they must do an EIS, even before they completed the EA (once again, going against NEPA).

It became apparent to me that in the case of these dredgers, all agencies with permit authority needed to sit at the table for the permitting process. Such a system exists, whereby a "Joint Review Process," as a part of Idaho's Mining Advisory Committee's agreement with the State and Federal Agencies involved in mine permitting, takes place. During this process, all Agencies work together to make the permitting system a more efficient system.

The outcome was amazing - during a Joint Review Process Meeting held in Grangeville, Idaho, in July of this year, we managed to have all of the Federal and State Agencies (with the exception of the U.S. Fish and

Wildlife Service) involved in the process at the table.

During this hearing, however, the Environmental Protection Agency (EPA) said that a Section 402 permit (pursuant to the Clean Water Act) would be required for suction dredging (even though no Statutory Authority could be found). Additionally, EPA had the nerve to state "that if an application for the 402 permit was made we won't process them". This was stated by both representatives of the Boise Office, and of the Regional Office of the EPA. The EPA was concerned that the processing of the applications would take too much of their manpower and funding.

After the EPA's announcement, a representative of the Nez Perce National Forest said that the Forest would not require EPA to participate in the NEPA process (although this is mandated in the Council of Environmental Quality (CEQ) regulations). Parts 1500 - 1508 of the CEQ regulations are applicable to and binding on all Federal Agencies for implementing the procedural provisions of NEPA.

ARE FEDERAL AGENCIES REFUSING TO DO THEIR JOBS?

It would appear to me, from the previous examples, that the Federal Agencies are refusing to do their job. The Secretary of the Interior has refused to do his job in the past; we rely on Solicitor's Opinions, treating them as if they were binding; and the Administration and the Agencies are attempting to Legislate through Policy.

One has only to look to C.P. Jeppesen, Jr. v. Bruce Babbitt, Independence Mining Co. v. Babbitt, or Baker v. United States Forest Service to recognize how individuals are singled out for rash treatment.

Madam Chairman, Ladies and Gentlemen of the Committee, we as miners are proud. We do not want special considerations; all we want is a level playing field - at this point we have a gross imbalance.

Miners have a moral and legal responsibility to protect the environment and to be good stewards of the land. We hear many stories about historic mining and its sins. The part that is not generally mentioned is that the majority of these sites were mined within the laws of the day, and many of these sites were either mined for or by the United States Government. The L. 208 program began in the 1930's; the government explored over ten thousand sites in the Northwest alone. Soon after the L.208 program came the War Powers Act. There are at least 315 sites in Idaho alone that were part of the Defense Minerals Exploration Administration (DMEA) program.

Some of these same sites are now mentioned in the same sentences with words like "Superfund". Individual miners and mining companies, along with State and Local governments, have paid the price. Not once has the Federal Government stepped forward to share in the responsibility. The responsibility for these sites should be directly proportionate to the benefit received. The beneficial parties include the United States Government.

Several years ago Idaho established the Abandoned Mine Reclamation Fund. This year the Idaho Legislature funded this program with mine tax dollars (royalties, If you will). A portion of these funds will be used annually for purposes of protecting human safety at abandoned mine sites. Some of these funds will be for properties that were mined under the DMEA program.

CONSIDER THE BUREAUCRACY AS YOU CONTEMPLATE ANY CHANGES TO THE MINING LAW

If you look to making changes to the General Mining Law please remember some of the problems that exist today, and what it will take to correct the current systems failure. Also, please take into regard the issues that are usually addressed in mining law change:

- Any mining law change should be designed to meet the needs of the small producer. With this, the changes will always meet the needs of the large company. Rarely if ever does that scenario work in reverse.

- Royalties: Miners pay this already to state and local government in the form of taxes. It is better to leave these funds at the state and local government level to insure their use for items such as schools and roads.

- Patent: Claims with valid, existing rights prior to a change in the law should be given "grandfather rights".

- Discovery: Is essential to mining and insures the claim is being held for mining purposes only. Discovery must remain in the law, as it is essential.

- Accountability: Both for regulators and miners.

- Foreign Corporations: The ownership of claims by foreign corporations is an issue of corporate law, not mining law.

- Access: All access to mining operations must be reasonable and customary, just as for any other business.

- Occupancy for Mining Purposes: This is essential due to the remoteness of many locations, and concerns for public safety and liability purposes.

Before we take a "knee-jerk" reaction to the questions regarding mining law changes, we should look to the effects felt from changes in the recent past.

The Holding Fee was propertied to be a great funding mechanism for the BLM. However, in the first year of the holding fee 2/3 of all mining claims were dropped. If this was the goal then it was a success. If it was not the goal, then the holding fee was a failure.

The practices of "Legislating by Policy" and relying on Solicitor's Opinions, "creatively interpreting" Regulations, and the non-responsiveness of the Regulators in a timely manner has caused large mining companies to exit the United States in droves. Independent Miners have lost family heritages and gone bankrupt. Once again, if these are the goals, these practices are a success, if not they are a dismal failure.

The American people need to analyze the situation. Since nothing can happen in the modern world without mining, do they want to depend on third world countries for their metals and minerals? I would think not.

The Mining Industry in general is in trouble. Production is down, and mining is going offshore. As a Nation we must remain self-reliant - we should start with mining.

As you are well aware, the wealth of any nation lies with its natural resources and its people. In order for us to do our jobs, we need a level playing field and there must be accountability on both sides - miners and

regulators. Independent Miners are here to say we are more than willing to work with you to reach a common goal. If some change is demanded then everyone must set at the table to insure success. We would like to be part of that process.

Respectfully submitted,
Lois Van Hoover

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